

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

D/K ENVIRONMENTAL  
3650 East 26th Street  
Vernon, California 90023

EPA ID No. CAT080033681

Respondent.

Docket HWCA 2004-0437

CONSENT ORDER

Health and Safety Code  
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and D/K Environmental (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. At all times relevant to this agreement, Respondent generated, handled, treated, and/or stored hazardous waste at: 3650 East 26th Street, Vernon, California (Site).

1.3. Inspection. The Department inspected the Site on May 30, 2003 and June 3, 2003, June 24, 2004, February 7, and June 28, 2005.

1.4. Authorization Status. The Department authorized Respondent to manage hazardous waste by a Hazardous Waste Facility permit (HWFP) issued on June 29, 1987, for a term of ten years. Respondent timely filed its application for a new HWFP thereby continuing the conditions of the expired HWFP in force as provided by

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California Code of Regulations, title 22, section 66270.51, subdivision (a) until the issuance of a new HWFP.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. A dispute exists regarding the violations alleged. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction involving either the Respondent or the Site, except to the extent provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

## 2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code section 25202, in that:

(a) on or about June 3, 2003, Respondent stored approximately 1200 drums of hazardous waste received from off-site in the hazardous waste receiving area (Area B);

(b) on or about June 24, 2004, Respondent stored approximately 1050 drums of hazardous waste received from off-site in the hazardous waste receiving area (Area B);

(c) on or about June 28, 2005, Respondent stored approximately 419 drums of hazardous waste received from off-site in the hazardous waste receiving area (Area B); and,

(d) on or about February 7, 2005, Respondent stored approximately 300 drums of hazardous waste received from off-site in Area C and in the Hazardous Waste Bin Storage Area.

The hazardous waste receiving area (Area B), Area C, and the Hazardous Waste Bin Storage Area are not authorized for storage of hazardous waste received from off-site.

2.1.2. Respondent violated Health and Safety Code section 25188, in that on or about June 3, 2003, June 24, 2004, and June 28, 2005, as set forth at paragraph 2.1.1. above, Respondent stored hazardous waste from off-site in the hazardous waste receiving area (Area B) in violation of Section 6.B.(2)(b) of the Settlement Agreement in the case *Chem-Tech Inc. v. State of California*, Department of Health Services, Case No. BC007827, dated January 17, 1991, hereafter the "Settlement Agreement," which provision is incorporated into paragraph 3.1.1. of the Schedule for Compliance set forth in Consent Order 97/98-3027, dated May 15, 1999, hereafter "Consent Order."<sup>1</sup> Paragraph 3.1.1. of the Consent Order states that "Respondent shall store all containers of off-site waste in the permitted storage area, in accordance with the Settlement Agreement Section 6.B.(2)(b)."

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<sup>1</sup> A true and correct copy of the Consent Order is attached hereto as Exhibit A and is incorporated herein by this reference. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit B and is incorporated herein by this reference.

### 3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1 Respondent having withdrawn its application to operate a Department authorized offsite treatment and storage facility, represents that it has removed all of the containerized hazardous waste from the facility and the violations alleged above do not continue.

3.1.2. Effective immediately:

3.1.2.1. Respondent shall not treat off-site generated hazardous waste at the Site or add off-site generated hazardous waste to any tank or container on the Site, except as provided in sub-paragraph 3.1.2.4.

3.1.2.2. No container of off-site generated hazardous waste shall be stored anywhere on the Site except on the transport vehicle (e.g., railcar or truck) on which it arrived at the Site unless the following conditions are met: hazardous waste is being actively pumped from the container into a rail car, or from a rail car into a tanker truck, and a temporary containment device such as a "spill pan" is used to collect any spills or releases.

3.1.2.3. Containers of off-site generated hazardous waste may be held on the transport vehicle (e.g., railcar or truck) on which they arrived at the Site for up to 10 days.

3.1.2.4. Hazardous waste may be pumped from a tanker truck into a rail car or a rail car into a tanker truck. Off-site hazardous waste shall not be held at the Site for more than 10 days.

3.1.2.5. All hazardous waste transferred at the Site shall be accompanied by a hazardous waste manifest and a detailed waste profile sheet.

3.1.2.6. Respondent shall not, at any time, treat, store, dispose, receive, handle or manage any ignitable or reactive off-site generated hazardous waste at the Site.

3.1.2.7. The provisions of sub-paragraphs 3.1.2. through 3.1.2.6 are not intended to authorize Respondent to conduct any activities for which it is not otherwise authorized and shall be superseded by the specific terms of any subsequent permit that may be issued by the Department.

3.1.3. Effective immediately, Respondent shall maintain this Order as part of its operating record.

3.1.4. Respondent shall comply with all terms, requirements, and conditions set forth in Section 5 (Penalty) of this Order.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent to:

Mukul Agarwal, Unit Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, CA 91201

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice,

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guidance, suggestions, or comments shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended by the term of such Stop Work Order.

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3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of Respondent's operations, except as provided in this Order. Respondent may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

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3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of three years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports submitted by Respondent pursuant to this Order, and approved by the Department, are hereby incorporated into this Order.



3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

#### 4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

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4.5. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

## 5. PENALTY

5.1. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$120,000, which includes the Department's costs in the amount of \$31,000.

5.2.. Environmental Education Account. As and for a Supplemental Environmental Project, Respondent shall, within 30 days of the effective date of this Order, pay \$22,250 to the Environmental Education Account of the California Environmental Protection Agency. This payment shall be in lieu of payment of an equal amount of the penalty. Respondent shall pay with a check payable to "Environmental Education Account (Fund 8020)" and send that check to:

Judy Tanimoto  
Fiscal Officer  
California Environmental Protection Agency  
P. O. Box 2815  
Sacramento, CA 95812-2815  
(916) 322-8200

Respondent shall also give notice of the payment to Linda S. Adams, Secretary for Environmental Protection, at the same address. If Respondent should publicize this SEP, Respondent agrees that it will state in a prominent manner that the SEP was undertaken as part of the settlement of an enforcement action.

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5.3. Payment of \$97,750 is due within 30 days from the effective date of the Order by Respondent's check made payable to the Department of Toxic Substances Control. Respondent shall deliver the payment to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

All of Respondent's checks shall identify the Respondent and Docket Number, as shown in the heading of this case. Photocopies of all such checks shall be sent to:

Mukul Agarwal, Unit Chief  
Statewide Compliance Division  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, CA 91201

James J. Grace  
Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

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## 6. EFFECTIVE DATE

6.1 The effective date of this Order is the date it is signed by the Department.

Dated: January 15, 2007

Original signed by Steve Kerdoon  
D/K Environmental  
Respondent

Dated: January 23, 2007

Original signed by Kim F. Wilhelm  
Kim F. Wilhelm, Chief  
Statewide Compliance Division  
Department of Toxic Substances Control

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This Consent Order posted on DTSC's website does not include all exhibits from the original document. If you need copies of a specific document, please contact the DTSC project manager listed on the document.